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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,050	06/24/2003	Scott A Moyer	03961	1049

23688 7590 07/22/2004

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EXAMINER

STERLING, AMY JO

ART UNIT PAPER NUMBER

3632

DATE MAILED: 07/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/604,050	Applicant(s) MOYER, SCOTT A	
	Examiner Amy J. Sterling	Art Unit 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is the **Final Office Action** for application number 10/604,050 Simplified Articulating Cup Holder, filed on 6/24/04. Claims 1-13 are pending. This **Final Office Action** is in response to applicant's reply dated 6/18/04. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

Claims 1-3, 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 5988579 to Moner, Jr. et al. and in view of United States Patent No. 5344112 to Peterson et al. and further in view of United States Patent No. 6388793 to Tamburrini et al.

Moner Jr. et al. discloses applicant's basic inventive concept, including a cup holder housing (12) having an opening on one end, a cupholder tray (10), including a body (24), two infinitely adjustable articulated arm units (44, 46) and a hinge (26, 28).

Moner, Jr. et al. does not disclose wherein the hinge is a living hinge. Peterson et al. shows an articulating arm (12) which is infinitely adjustable which is used for holding a cylindrical object, wherein the arm is attached to a body (22) via a living hinge, the hinge used for its resilient properties and simplicity. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made

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from the teachings of Peterson et al. to have substituted the hinge in Moner, Jr. et al. for the living hinge, in order to simplify the hinge.

Moner, Jr. et al. and Peterson et al. do not disclose that the hinge is molded of a first plastic and over molded of a second plastic which has a spring like closing action or that the device is injection molded.

Tamburrini et al. shows a living hinge (220) wherein the device is injection molded (Col. 2, lines 45-50), the device having a first plastic and a second plastic which has a spring like closing action. (See claims 9, 11 and 12 found in Col. 4, 5 and 6), the second injection molded material used for its resilient properties. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made from the teachings of Tamburrini et al. to have made the device of two different materials in order have the living hinge of a resilient material.

Claims 4, 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 5988579 to Moner, Jr. et al. and in view of United States Patent No. 5344112 to Peterson et al and in view of United States Patent No. 6388793 to Tamburrini et al. as applied to claims 1, 3, 7 and 9 and further in view of United States Patent Publication 2004/0011934 to Czepowicz et al.

Moner, Jr. et al, Peterson et al., and Tamburrini et al. show the basic inventive concept with the exception that it does not teach that the device is made from polypropylene.

Czepowicz et al. shows a container holding device which is made of polypropylene which is generally used in injection molding for its viscous properties.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made from the teachings of Czepowicz et al. to have made the device of polypropylene for its viscous properties.

Claims 5, 6, 11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 5988579 to Moner, Jr. et al. and in view of United States Patent No. 5344112 to Peterson et al. as applied to claims 1 and 7 and further in view of United States Patent No. 2002/0096613 to Czepowicz.

Moner, Jr. et al, Peterson et al., and Tamburrini et al. show the basic inventive concept with the exception that it does not teach that the device is made from a thermoplastic elastomer including Santoprene.

Czepowicz et al. shows a container holding device which is made of thermoplastic elastomer including Santoprene (See page 4, 0036) which is generally used in injection molding for its anti-slip properties. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made from the teachings of Czepowicz et al. to have made the device of the thermoplastic Santoprene in order for the device to have anti-slip properties.

Response to Arguments

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the

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references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, a living hinge would be easily substituted for a pivoted hinge, in order to make the clamping item molded from the same material or all one piece, knowledge that was generally available to one of ordinary skill in the art at the time of the invention.

Conclusion

THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action. Any inquiry concerning this communication should be directed to Amy J. Sterling at telephone number 703-308-3271. The examiner can normally be reached (M-F 8 a.m.-5:00 p.m.). If attempts to reach the examiner are

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unsuccessful, the examiner's supervisor, Leslie Braun can be reached at 703-308-2156.

The fax machine number for the Technology center is 703-872-9306 (formal amendments) or 703-308-3519 (informal amendments/communications). Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center receptionist at 703-308-2168.



AJS
Amy J. Sterling
7/14/04



ANITA KING
PRIMARY EXAMINER